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IN RE CAMPBELL: INFLATING THE HEIRSHIP IN OKLAHOMA

The Oklahoma Court of Appeals has broken new ground in the case of *In re Campbell*,¹ holding that persons who have no interest in an estate under Oklahoma law nevertheless have a sufficient interest to contest a will in an Oklahoma probate proceeding if they are classified as heirs under the law of any state in which the decedent owned real property.² The testator willed his estate, consisting of real and personal property in Oklahoma and minor mineral interests in Texas and Kansas, to an Oklahoma private charitable foundation. The contestants were nine excluded nephews, nieces, great-nephews and great-nieces who sought to rescind admission of the will do probate on statutory grounds.³

The Tulsa County District Court declared that the great-nephews and great-nieces were not "person[s] interested" in the estate within the meaning of the Oklahoma contest statute⁴ because, if the will was found invalid, they would not be entitled under Oklahoma law to any portion of the estate.⁵ The Oklahoma Court of Appeals reversed⁶ in a brief opinion that focused on the intestate succession rights given to

1. 44 OKLA. B. ASS'N J. 545 (Okla. Ct. App.), *cert. denied*, 44 OKLA. B. ASS'N J. 1434 (1973).

2. *Cf. Guilfoyle v. Hayes*, 169 Va. 548, 194 S.E. 804 (1938).

3. The grounds asserted were: "(1) That the testator was not competent, free from duress, menace, fraud or undue influence when he made the will and codicil, and (2) that the will was not duly executed and attested." 44 OKLA. B. ASS'N J. at 545. See OKLA. STAT. tit. 58, § 61 (1971).

4. The statute states in pertinent part: "When a will has been admitted to probate, any person interested therein may . . . contest the same or the validity of the will." OKLA. STAT. tit. 58, § 61 (1971). See also OKLA. STAT. tit. 58, § 29 (1971).

5. The Oklahoma law of intestate succession provides in part: "If there be no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation . . ." OKLA. STAT. tit. 84, § 213 (1971).

It should be noted that since the nieces and nephews were considered heirs under the foregoing Oklahoma statute, their right to contest the will presented no issue to the Oklahoma Court of Appeals. Therefore, for the purposes of this note, the term "contestants" will be used to refer only to the great-nephews and great-nieces.

6. 44 OKLA. B. ASS'N J. at 548.

the will contestants by Texas and Kansas law.⁷ After considering previous interpretations of the statutory term "interested persons,"⁸ the court concluded the phrase encompassed the *Campbell* contestants because of their rights created in Texas and Kansas. In summary disposal of the issue, the court stated:

Their said interests *could be* greatly prejudiced in ancillary proceedings if the will and codicil are adjudged valid in Oklahoma. Since they have an interest in the property of the estate, they are entitled to contest the validity of the will and codicil in the Oklahoma probate proceeding.⁹

Superficially, the *Campbell* issue was a simple one and its resolution a routine matter of statutory construction; however, the opinion leaves a number of issues unaddressed and raises through its silence implications of some import for the probate courts and the practicing bar of Oklahoma. This note will examine the impact of those implications and suggest possible solutions for some of the problems they raise.

There appear to be two grounds supporting the *Campbell* decision. The first is that the contestants had an interest in the estate. While this cannot be denied, the real question is whether their interest was one that the Oklahoma legislature intended to recognize under the contest statute. *Campbell* affirmatively answers the question only by implication, since the court's opinion provides no discussion of legislative intent. Yet an arguable inference, as the co-executors contended, is that the legislature intended the interests in question to be those granted by the laws of Oklahoma, or at least by the laws of a state having a significant interest in the matter. There is certainly no reason to suppose that Oklahoma legislators, had they considered the question, would have meant to expose the courts of the state to contests by persons claiming rights under the laws of sister states whose only contact with the decedent was as the situs of his minor mineral interests. Bolstering this view is the fact that, prior to the *Campbell* decision, it was the practice of those offering wills for original probate in Okla-

7. See KAN. STAT. ANN. § 59-508 (1964); TEX. PROB. CODE § 38 (1956).

8. *Washington and Lee University v. District Court*, 492 P.2d 320 (Okla. 1971), *petition for cert. dismissed*, 406 U.S. 951 (1972) (widow whose right of election as forced heir was unaffected by will's admission to probate did not have pecuniary interest which depended on admission or denial of will to probate and was therefore not a "person interested" having the right to contest under OKLA. STAT. tit. 58, § 29 (1971)); *Dillow v. Campbell*, 453 P.2d 710 (Okla. 1969) (executor whose nomination was revoked by codicil had no right to contest the codicil because his interest in the estate was not direct and pecuniary; however, the interest of trust beneficiaries in the talent of executor-trustee was sufficiently direct to allow their contest of the codicil).

9. 44 OKLA. B. ASS'N J. at 547 (emphasis added).

homa to give statutory notice only to those known persons who could be heirs under the Oklahoma law of intestate succession.¹⁰

The second ground for the decision is suggested by the court's apparent concern for any prejudice which might result in other states from a denial of the right to contest in Oklahoma.¹¹ The court of appeals apparently felt obliged to correct the possibility of prejudice elsewhere in deference to the constitutional precepts of due process.

While this concern is admirable, the result is in no way required by the due process clause. It is now settled that in order for a person to be bound by a proceeding, even one in rem, that person must not only have proper notice, but also the opportunity to defend.¹² Thus

10. Petitioner's Brief for Rehearing on Certiorari at 1, *In re Campbell*, 44 OKLA. B. ASS'N J. 545 (1973). See OKLA. STAT. tit. 58, § 25, 34 (1971).

11. See note 9 *supra* and accompanying text.

12. E.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315-16 (1950), where the Supreme Court articulated the modern guidelines for notice comporting with due process. In holding publication notice to trust beneficiaries whose addresses were known to be constitutionally inadequate to notify them of proceedings settling the accounts of a common trust fund, the Court said that due process requires "notice reasonably calculated, *under all the circumstances*, to apprise interested parties of the pendency of the action . . ." *Id.* at 314 (emphasis added).

Although the Court refused in *Mullane* to characterize the action as in rem or in personam, the Court has subsequently applied its constitutional principles to proceedings clearly in rem. *Schroeder v. City of New York*, 371 U.S. 208 (1962); *Walker v. Hutchinson*, 352 U.S. 112 (1956) (condemnation of land); *Covey v. Town of Somers*, 351 U.S. 141 (1956) (enforcement of tax lien). The Supreme Court has not directly addressed the issue of whether the *Mullane* standard is applicable to probate proceedings, but some commentators believe the Court would apply it, given the opportunity. See Note, *Due Process—The Requirement of Notice in Probate Proceedings*, 40 Mo. L. REV. 552, 555 & n.12 (1975); Comment, *The Unconstitutionality of the Notice Provision of the Texas Probate Code*, 23 Sw. L.J. 890, 895 (1969).

The history of notice requirements for probate, at least probate in common form, has been short. In English ecclesiastical courts, probate in common form required no notice, while even in solemn form only the next of kin was notified. Note, 13 WASH. L.J. 244, 244 n.8 (1974). American states have likewise been slow to insist on notice other than by publication. See *Caverno v. Webb*, 239 Ala. 671, 196 So. 723 (1940); *Broussard v. Herbert*, 149 La. 309, 89 So. 14 (1921); DEL. CODE ANN. tit. 12, § 1304 (1974); KY. REV. STAT. ANN. § 394.220 (1972); MO. REV. STAT. § 473.047 (1959). The theory underlying this reluctance is that since there is no constitutional right to inherit property, succession is a matter of privilege which may be granted on any terms which the state wishes to impose. Note, *Due Process—The Requirement of Notice in Probate Proceedings*, 40 Mo. L. REV. 552, 557 (1975); Note, 13 WASH. L.J. 244, 244 n.7 (1974). As the Supreme Court has broadened the class of interests to which the due process clause is applicable, including in that class rights granted by statute, more states have begun to require personal notice of probate proceedings to persons interested in estates. At present the majority of states have done so, although not necessarily pursuant to the *Mullane* standard. Note, 40 Mo. L. REV. at 555 *supra*.

The situation is somewhat different where strictly informal probate is involved and the scheme provides for no notice, or very limited notice, but allows an extended period during which the matter can be reopened. The Supreme Court long ago approved such informal probate as comporting with due process. *Farrell v. O'Brian*, 199 U.S. 89

if Oklahoma courts interpret the state's contest statute to prevent the appearance of the contestants, neither *res judicata* nor *estoppel* can be applied to prevent them from having their day in court in proceedings in other states on the same matter.

If this happens, it would not be Oklahoma that denies due process to the contestants, but the courts or legislatures in the states where ancillary proceedings are held. It is not the obligation of Oklahoma courts to protect would-be parties from unfair actions which might be taken by the courts of other states.¹³

It should be noted that there was no determination in *Campbell* that the contestants' interests would be prejudiced in ancillary proceedings if the will was found valid in Oklahoma. In fact, Kansas law provides that in order for a foreign will to be admitted to ancillary probate in that state it must appear to the court's satisfaction that the will was properly admitted to probate in another jurisdiction.¹⁴ Since in Kansas an heir, devisee, or legatee can oppose admission of a will and appeal from orders admitting a will, Kansas law appears to offer no obstacle whatever to the *Campbell* contestants' pursuing their cause there.¹⁵

In Texas, on the other hand, the probate code has been revised to include a provision which endeavors to offer full faith and credit in Texas courts to the probate decree of the state of a decedent's domicile.¹⁶ Case law under this new code has made clear that, once a probate decree is shown to be that of the decedent's domicile, the inquiry of the Texas court ends and it must adopt the foreign decree.¹⁷ Thus, the interests of the *Campbell* contestants would indeed have been pre-

(1905). *Cf.* *Culbertson v. Witbeck*, 127 U.S. 326 (1888) (where notice by publication was approved for ancillary probate because all persons interested lived outside the state).

13. *See Minichello v. Rosenberg*, 410 F.2d 106, 112 (2d Cir.), *cert. denied*, 396 U.S. 844, *rehearing denied*, 396 U.S. 949 (1969).

14. KAN. STAT. ANN. § 59-2230 (1964).

15. KAN. STAT. ANN. § 59-2224 (Supp. 1975).

16. *See* TEX. PROB. CODE § 100 (1956), *as amended*, TEX. PROB. CODE § 100 (Supp. 1976). It was formerly held that a foreign will admitted to ancillary probate in Texas by filing and recording under the old statute could be contested as in original probate, although the language of the statute did not seem to contemplate such a contest. *Pena y Vidaurre's Estate v. Bruni*, 156 S.W. 315, 316 (Tex. Civ. App. 1913). Now when a foreign will is admitted to ancillary probate in Texas by filing and recording, contest is restricted to claimants alleging (1) lack of compliance with Texas recording procedure, (2) previous rejection of the will in another Texas proceeding, or (3) the setting aside of its previous decree by a court of decedent's domicile. *See* TEX. PROB. CODE § 100 (Supp. 1976).

17. *Barney v. Huff*, 326 S.W.2d 617 (Tex. Civ. App. 1959); *Jones v. Jones*, 301 S.W.2d 310 (Tex. Civ. App. 1957).

judiced in Texas proceedings had their contest in Oklahoma been disallowed and the will found valid in the forum state. It must be emphasized once more, however, that the problem is one for the courts and legislature of Texas, not those of Oklahoma.¹⁸

Just as the fourteenth amendment did not mandate the *Campbell* decision, neither did the concept of giving full faith and credit to the public acts of other states. The United States Supreme Court has held that a forum state need not apply the statutes of another state to the litigated matter so long as the forum state itself has a legitimate interest in that matter.¹⁹ The forum may choose to apply its own statutes or those of any other state having the requisite interest without running afoul of the full faith and credit clause. Applied to the *Campbell* case, this simply means that the Federal Constitution left the Oklahoma court free to use the intestate succession statutes of the forum or of the situs states for the purpose of defining persons interested in the estate.²⁰

18. Were the situation reversed and Oklahoma the nondomiciliary situs state, OKLA. STAT. tit. 58, § 53 (1971), would limit grounds for challenge of the foreign will to errors disclosed on the face of the foreign probate record. Once admitted to ancillary probate the will could be contested, but still on restricted grounds. Only contest based on newly-discovered evidence would be allowed. See *Patterson v. Dickenson*, 193 F. 328 (9th Cir. 1912). Thus it is apparent that Oklahoma courts, as well as those of Texas, might be required to strike down such statutes as violative of due process as applied to *Campbell* heirs.

It is *not* necessarily, however, the situs acceptance of the decree of the foreign domicile which leads to the violation. Rather, the denial of due process actually stems from a lack of uniformity among state laws determining who will contestants are in each state. Whenever situs law permits a broader class of "persons interested" to contest than does the law of the decedent's domicile, and the courts of the domicile rule contrary to *Campbell*, the due process problem exists. The irony is that voluntary full faith and credit to foreign probate decrees is a most desirable trend because it encourages all potential contestants to take part in the domiciliary proceedings, resulting in a savings of time, expense, and judicial resources.

Ideally the problem ought to be resolved by uniformity of state law, either (1) by a consistent definition of heirs and their eligibility to contest wills, or (2) by giving voluntary full faith and credit uniformly to foreign decrees affecting local land, combined with acceptance of the *Campbell* holding. It is more likely, however, that if *Campbell* is adopted by other states, full faith and credit given to their decrees by situs courts will not be challenged on due process grounds.

On the other hand, if *Campbell* is not followed in other jurisdictions, situs state courts attempting to follow full faith and credit statutes may be forced to strike down the statutes or construe them as not applying to bind *Campbell* heirs. The latter result could be attained by following the approach of the Uniform Probate Code, which provides that final orders of foreign courts must be accepted by another state if "made in a proceeding involving notice to and an opportunity for contest by all interested persons" UNIFORM PROBATE CODE § 3-408.

19. *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *Kryger v. Wilson*, 242 U.S. 171 (1916). Cf. *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930).

20. Courts in Kansas and Oklahoma are directed by statute to apply domestic law

It seems clear that the Oklahoma Court of Appeals was not constitutionally required to reach the result it did. The problem can then be characterized as one of choice of law, and the question becomes whether the court made a wise choice.

In *Campbell*, the law of a foreign state in which the decedent's property was located was applied to give domestic contestants an interest that entitled them under domestic law to be heard in a domestic court. This is a form of the traditional situs rule whereby courts of the forum look to the whole law, including the choice of law rules, of the state in which the property is located.²¹ The Oklahoma court, assuming that interests in real property located in Texas and Kansas would be determined by the laws of those states, must have reasoned that the right to contest a will purporting to dispose of those interests should also be settled by reference to situs law.²²

Use of the situs rule in choice of law has been frequently criticized, though apparently not by Oklahoma courts.²³ To the extent that it is grounded on the premise that the situs has a strong interest in litigation affecting title to its land, the rule is not unreasonable. However, a mechanical application can lead to inequitable results in cases in which the interests of a nonsitus state are predominant.²⁴ The *Campbell*

to interests in the real property of decedents when the property is within their borders. See KAN. STAT. ANN. § 59-806 (Supp. 1975); OKLA. STAT. tit. 84, § 20 (1971).

Texas cases reach the same result. *Pilgrim v. Griffin*, 237 S.W.2d 448, 450 (Tex. Civ. App. 1951); *Ragland v. Wagener*, 179 S.W.2d 380 (Tex. Civ. App.), *rev'd on other grounds*, 142 Tex. 651, 180 S.W.2d 435 (1944); *King v. Lowry*, 80 S.W.2d 790 (Tex. Civ. App. 1935); *Montgomery v. Montgomery*, 99 S.W. 1145 (Tex. Civ. App.), *aff'd*, 101 Tex. 118, 105 S.W. 38 (1907). See also *Simmons v. O'Connor*, 149 S.W.2d 1107, 1109 (Tex. Civ. App. 1941).

21. Historically the term "situs rule" has been used to express a broad concept of territorialism and has encompassed all conflicts choices based on physical location. In this note, the term will be used to refer only to choices determined by the location of *real property*.

22. Oklahoma has no statute directing its courts to apply the law of the situs to foreign property; however, a legislative intent to that effect can, by negative implication, be inferred from OKLA. STAT. tit. 84, § 172 (1971), which codifies the common law doctrine of equitable conversion.

23. See generally Weintraub, *An Inquiry Into the Utility of "Situs" as a Concept in Conflicts Analysis*, 52 CORN. L.Q. 1 (1966) [hereinafter cited as Weintraub]; Morris, *Intestate Succession to Land in the Conflict of Laws*, 85 L.Q. REV. 339 (1969).

24. For example, an heir convicted in Kansas of decedent's murder was allowed by an Oklahoma court to succeed to local land because the Kansas statute disinheriting him could not affect title to Oklahoma land, and the similar Oklahoma statute was intended to apply only to those convicted in that state. *Harrison v. Moncravie*, 264 F. 776 (8th Cir. 1920), *appeal dismissed*, 255 U.S. 562 (1921). See also *Toledo Society for Crippled Children v. Hickok*, 152 Tex. 578, 261 S.W.2d 692 (1953), *cert. denied*, 347 U.S. 936 (1954); *Ing v. Cannon*, 398 S.W.2d 789 (Tex. Civ. App. 1965); *Singleton v. St. Louis Union Trust Co.*, 191 S.W.2d 143 (Tex. Civ. App. 1945).

result is hardly inequitable, but it is certainly one in which the interests of the nonsitus state were predominant; an *Oklahoma* court was dealing with the claims of *Oklahoma* residents to property located largely in *Oklahoma*, which an *Oklahoma* domiciliary had attempted by an *Oklahoma*-made will to transfer to an *Oklahoma* foundation. In fact, *Oklahoma* possessed nearly every conceivable interest in the matter *except* that it was not the situs.

Against such an array of connections between *Oklahoma* and the estate, what interests could the situs states claim? The answer reads like a lineup of the arguments used to justify the situs rule.

First, the situs state may claim that its laws governing transmission of real property should be applied to protect potential buyers who rely on situs land records in making purchases. If a foreign court can transfer title to situs land without reference to situs law, the function of the situs recording system is threatened.²⁵ This interest is legitimate, but it has no application where, as in *Campbell*, there was no one who relied on record title to the property. Furthermore, this interest could be protected by the nonsitus court's order to the titleholder to comply with situs land record statutes. The fact that a few states have statutes which permit title to local land to be transferred by the local recordation of foreign wills and probate decrees indicates some belief that title examination is not made unduly cumbersome by such a remedy.²⁶

Second, the situs state has an interest in implementing the judgment of its legislature as to whom an intestate would wish his property to go. Where the decedent and all claimants to the property are non-residents, however, that interest is easily outweighed by the interest of the decedent's domicile in implementing the judgment of *its* legislature on the same matter.

Third, it may be argued that the situs state's concern over collection of taxes warrants the application of its laws. This is obviously fallacious, since a state has the same remedies against recalcitrant property owners, whether they are residents or nonresidents. There is no reason to suppose that application of situs law would result in placing land in the hands of more willing taxpayers.

A fourth interest arises in the rare case in which application of

25. W. COOK, *THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS*, 262 (1942); Weintraub, *supra* note 23, at 3; Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. CHI. L. REV. 620, 638 (1954); Goodrich, *Two States and Real Estate*, 89 U. PA. L. REV. 417, 419 (1941).

26. See TEX. PROB. CODE § 96 (1956).

nonsitus law results in ownership or use of the property in a manner inconsistent with the policy of the situs state, or partitions the property into economically useless portions.²⁷ In *Campbell*, however, neither of these considerations were present. In fact, application of the laws of the situs states there would have caused the property interests to be even more fragmented by qualifying an additional four persons as takers in intestacy.

The remaining consideration is perhaps the strongest and most deeply embedded in legal lore: the notion that land is under the exclusive control of the state in which it is located, and only that state has the power to make disposition of that land.²⁸ This concept has been carried so far as to imply that courts of a nonsitus state have no jurisdiction to directly affect title to foreign land.²⁹

This lack-of-jurisdiction approach is somewhat softened by the recognition that a nonsitus court can make orders binding upon persons before it on penalty of contempt. To the extent operation is upon parties personally, these orders can indirectly affect title to foreign land.³⁰ The distinction is a technical fiction, for in reality there is no way to affect title to land except through adjudicating the rights and obligations of individuals.³¹ The harshness sometimes resulting

27. Such an interest would be present if, for example, the foreign will created interests violating the situs state's Mortmain Statute or the Rule Against Perpetuities.

28. The Anglo-American legal system's territorial concept is said to have developed as early as the eleventh century, G. CHESHIRE, *PRIVATE INTERNATIONAL LAW* 22 (5th ed. 1957), and was greatly extended by the influence of Huber, a seventeenth century Dutch writer. See E. SCOLES AND R. WEINTRAUB, *CONFLICT OF LAWS* 4 (2nd ed. 1972). The classic first American conflicts treatise was thoroughly steeped in territorialism. See J. STORY, *COMMENTARIES ON THE CONFLICT OF LAWS*, §§ 17, 18, 20 (7th ed. 1872).

29. *Hood v. McGehee*, 237 U.S. 611 (1915); *Fall v. Estlin*, 215 U.S. 1 (1909); *Clarke v. Clarke*, 178 U.S. 186 (1900). Note that by characterizing the nonsitus decree as one made without jurisdiction, situs courts can justify their refusal to recognize or enforce such decrees, even where situs law was applied in the action.

Although the Supreme Court, since the opinions cited above, has not indicated a change in its position that nonsitus courts lack jurisdiction to affect foreign land, it has been argued that this analysis does not hold up when measured by proper constitutional standards. See Weintraub, *supra* note 24, at 10.

While most courts today use the bar of res judicata to prevent relitigation at the situs of an issue raised by a party who appeared in the original proceeding, *id.* at 13 & n.59, the majority of courts at the situs do not feel themselves bound by either the merger concept or full faith and credit to enforce affirmative nonsitus decrees. See *id.* at 14 n.67.

30. *Durfee v. Duke*, 375 U.S. 106 (1963); *Massie v. Watts*, 10 U.S. 148 (1810); *West v. West*, 268 P.2d 250 (Okla. 1954); *Sharp v. Sharp*, 65 Okl. 76, 166 P. 175 (1916); *Fitch v. Huntington*, 125 Wis. 204, 102 N.W. 1086 (1905); R. LEFLAR, *AMERICAN CONFLICTS LAW* § 174 (1968); Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 MICH. L. REV. 527 (1919).

31. Cook, *The Jurisdiction of Sovereign States and the Conflict of Laws*, 31 COLUM.

from application of the situs rule was apparent to early courts and they soon devised some exceptions to its operation, using the theories of equitable conversion and common fund.³² Fortunately, the need for these fictions is diminishing because of a slight trend by situs states toward giving voluntary effect to foreign decrees which act upon situs land.³³

The primary rationale for persistence of the situs rule is that it is necessary for the preservation of each state's sovereignty.³⁴ But if concern for sovereignty is truly the reason for the remaining situs reluctance to recognize and enforce the equitable decrees of foreign courts, then it is difficult to explain why virtually all states recognize deeds executed under the compulsion of such decrees.³⁵ It may well be that sovereignty is not the real issue and that actions involving real property have instead become the last safe refuge for simple state chauvinism. The need for giving full faith and credit to foreign decrees in an increasingly mobile nation should overcome such views in every case where the only relation with the situs state consists of physical control over land.³⁶

It is clear that the interests of the situs states in *Campbell* were not strong; indeed they could be fairly termed negligible.³⁷ There seems to be little reason to apply situs law to the transmission of property itself³⁸ and far less reason for the purpose of classifying persons

L. REV. 368, 381 (1931). For an excellent general discussion of the relations of rights in rem and in personam, see *id.* at 372-381.

32. See OKLA. STAT. tit. 84, § 172 (1971), construed in *Lanyon v. O'Neal*, 142 Okl. 163, 329 P.2d 850 (1958).

33. See, e.g., *Varone v. Varone*, 359 F.2d 769, 771-72 (7th Cir. 1966); *McElreath v. McElreath*, 162 Tex. 190, 345 S.W.2d 722 (1961); *Worthley v. Worthley*, 44 Cal. 2d 465, 283 P.2d 19 (1955); TEX. PROB. CODE § 100 (Supp. 1976); UNIFORM PROBATE CODE § 3-408; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 102, Comment d (1971).

34. See notes 28-29 *supra* and accompanying text.

35. See, e.g., *Carpenter v. Strange*, 141 U.S. 87, 106 (1890); *Davis v. Headley*, 22 N.J. Eq. 115, 120 (1871); Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. CHI. L. REV. 620, 628-31 (1954); Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 MICH. L. REV. 527, 547-49 (1919).

36. See Hancock, *Full Faith and Credit to Foreign Laws and Judgments in Real Property Litigation: The Supreme Court and the Land Taboo*, 18 STAN. L. REV. 1229, 1318-21 (1966); Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 U. CHI. L. REV. 620, 628-34 (1954); Hopkins, *The Extraterritorial Effect of Probate Decrees*, 53 YALE L.J. 221, 251-54 (1944).

37. For a discussion of state interests in the application of forum inheritance statutes to the devolution of foreign land, see Weintraub, *supra* note 24, at 17-18, concluding that the situs has no interest under some circumstances.

38. If the situs rule was discarded altogether, *Campbell* heirs would have no interest in the estate. Of course, they would then be forbidden to contest the will in domiciliary probate and in any situs proceeding that might be held.

allowed to contest wills in Oklahoma. In some respects, a more reasonable result would have been reached had the court used an interest-analysis approach similar to that adopted in Oklahoma for torts problems in *Brickner v. Gooden*.³⁹ In *Brickner*, the court referred to the law of the state having the most significant relationship with the litigated matter.⁴⁰ In the *Campbell* case, such an approach would have resulted in evaluation of the interests of would-be contestants under the laws of Oklahoma, the forum, and in limiting the right to contest to heirs thereunder.⁴¹

The Oklahoma Court of Appeals was not required to allow a contest by heirs under foreign law nor, from a logical standpoint, was it really justified in doing so. Nevertheless, the choice was one within the court's power to make. The results of that choice are positive in at least one respect, since the desirability of unitary administration of decedents' estates is widely accepted.⁴² To the extent that *Campbell* encourages all potential will contestants to appear in the domiciliary probate proceedings, it takes a step in furthering that policy; however, under the Oklahoma statutes presently in force the step is a costly one.

In their petition for certiorari to the Oklahoma Supreme Court, the co-executors of Campbell's estate pointed out that if heirs under foreign law are considered to be persons interested in an estate, the current practice of providing written notice of probate proceedings only to heirs under Oklahoma law will be insufficient.⁴³ Henceforth,

39. 525 P.2d 632 (Okla. 1974). In *Brickner* the Oklahoma Supreme Court held that factors used for determining the most significant relationship included the four set out in RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1971):

(1) the place where injury occurred, (2) the place where the conduct causing the injury occurred, (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (4) the place where the relationship, if any, between the parties occurred.

525 P.2d at 637.

The policy-interest analysis has gained increasing favor as a treatment for choice of law problems, within limits. For instance, the Restatement Second uses it for contracts problems as well as torts; yet the American Law Institute, like virtually all courts, draws the line at its encroachment upon the time-honored situs rule. Of course, the policy-interest approach, while certainly an improvement, is not itself without problems. It brings increased uncertainty to the outcome of litigation and provides a better opportunity for decisions resulting from thinly-disguised state chauvinism.

40. 525 P.2d at 637.

41. Actually, upon return of the *Campbell* case to the district court, the executors demurred to the contestants' plea, the court sustained the demurrer, and no appeal was taken on the issue.

42. Shriver, *The Multi-State Estate*, 3 REAL PROP. PROB. & TR. J. 189 (1968); Morrill, *Multi-State Estates*, 103 TR. & ES. 734, 780 (1964).

43. Petitioner's Brief for Rehearing on Certiorari at 1, 2, *In re Campbell*, 44 Okla. B. Ass'n J. 545 (1973).

to successfully invoke the jurisdiction of Oklahoma probate courts, petitioners will be required to ascertain the location of all property interests claimed by the decedent, evaluate the validity of these interests, find and interpret the law of each situs state, and send notice to all persons who might be heirs under any of those laws. Not only will this be burdensome and productive of delay, but it raises a difficult practical problem.⁴⁴

The executor or administrator's inventory of estate property is due within three months of admission of the will to probate⁴⁵ and the location of all the decedent's property cannot be known until the inventory is completed. Therefore, it will normally be impossible to send notice to *Campbell*-type heirs at the time of original petition for admission of a will to probate. These heirs will not be notified until the inventory is completed, although the period within which they must contest is only three months from the time the personal representative is appointed, usually at the time the will is admitted to probate.⁴⁶ After that period elapses, the proceeding becomes conclusive upon most potential parties. As a result, the right granted by the court of appeals to *Campbell* heirs is somewhat illusory. Furthermore, since *Campbell*-type heirs have been declared to be persons interested in the estate, an heir whose contest is precluded without his having received notice is denied due process by the Oklahoma statute of limitations.⁴⁷

Campbell, because it is a decision by the Oklahoma Court of Appeals, has been designated by the Oklahoma Supreme Court as not to be considered precedent or authority, but merely persuasive.⁴⁸ This means that another byproduct of the decision will inevitably be confusion, because prospective *Campbell*-type will contestants now have an unofficial blessing to claim the status of interested persons, while courts or will proponents have no precedent to rely on in support of the opposing position.⁴⁹

44. At least the burden of the probate court need not include legal evaluation of the contestant's claim to heirship under foreign law. See *In re Harjoche's Estate*, 193 Okl. 631, 146 P.2d 130 (1944), where the Oklahoma Supreme Court held that the mere setting up of a claim of heirship would qualify the claimant as an interested person for purposes of contesting a will.

45. OKLA. STAT. tit. 58, § 281 (1971).

46. OKLA. STAT. tit. 58, § 67 (1971).

47. The statute reads in pertinent part: "the probate of the will is conclusive, saving to infants and persons of unsound mind, a period of one (1) year after their respective disabilities are removed." OKLA. STAT. tit. 58, § 67 (1971).

48. OKLA. STAT. tit. 12, ch. 15, app. 2, NEW POLICY ON PUBLICATION OF APPELLATE OPINIONS (Supp. 1975).

49. For a general discussion of this problem and the likely effect of an attempt to

Given these facts, the *Campbell* decision can be viewed as a judicial step that requires legislative refinement for its full implementation. As such, it offers the Oklahoma legislature several alternatives for action.

First, the *Campbell* rule could be adopted legislatively, either implicitly by inaction or explicitly by codification. Any consideration of this alternative by the Oklahoma legislature, however, should seek to combine approval of the rule with action designed to correct the notification problem accompanying it. Legislative correction could take several forms; for example, the period for contest could simply be extended for a reasonable time beyond the deadline for inventory completion. Another solution would be to add those who have not received notice during the initial three-month period to the class of persons on whom the admission of the will to probate is not conclusive.

The second alternative is to overrule *Campbell* by positive legislation. The effect of this action would be to return the due process problem to situs states. States with liberal contest statutes for ancillary probate proceedings would be safe from constitutional attack by *Campbell*-type heirs, since these contestants would be permitted their day in court at the situs. However, those situs states whose statutes restrict contest or deny it altogether would be vulnerable to the due process challenge to the extent that their individual statutes prohibit will contests by any class of potential contestants that had no opportunity to contest elsewhere. As noted previously, perhaps the Uniform Probate Code offers the most favorable solution to the situs problem by combining a full faith and credit provision with an exception extending to potential contestants who are not given proper notice of the original probate proceeding.⁵⁰

The *Campbell* decision may theoretically be regarded as a good one in that it fosters the unitary administration of estates and allows progressive voluntary full faith and credit statutes in situs states to escape constitutional challenges. Although *Campbell* may be criticized

correct it, see Lilly, *Some Thoughts for Judicial Reform in Oklahoma*, 10 TULSA L.J. 91, 98-99 (1974).

50. It seems clear from the foregoing discussion that the *Campbell* decision requires legislative reexamination and revision of specific statutory provisions; first in circumstances in which Oklahoma is the decedent's domicile, and secondly, where Oklahoma is the situs and a foreign domicile has ruled contrary to *Campbell* in original probate. Perhaps these revisions should merely be the beginning of a thorough reassessment of Oklahoma law relating to decedents' estates. Such reassessment, made with a view toward broad integrated reform, would necessarily entail consideration of adopting the Uniform Probate Code in whole or in part. While discussion of the merits of this proposal is outside the scope of this note, the reader may find related information in Lilly, *The Uniform Probate Code and Oklahoma Law: A Comparison*, 8 TULSA L.J. 159, 9 TULSA L.J. 1 (1975).

as manifesting unquestioning adherence to the situs rule, the main problems with the decision are procedural. If the benefits of the full faith and credit trend are to be assured, it is imperative that these problems be addressed and resolved legislatively. If this is accomplished, the Oklahoma Court of Appeals will, perhaps inadvertently, have guided the state toward significant and helpful reform in the probate laws. Perhaps even more importantly, the reform would be compatible with the Uniform Probate Code and would not impede the progress being made nationally, as other states continue to adopt the Code.

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